

# Justice Sotomayor on the Fourth Amendment

---

David L. Hudson Jr.

Belmont Law School

<http://davidlhudsonjr.com>

# Thesis

---

- Justice Sotomayor is the Court's most consistent defender of the Fourth Amendment and its values.



# Collins v. Virginia (2018)

---

- “whether the **automobile exception** to the Fourth Amendment permits a police officer, uninvited and without a warrant, to enter the **curtilage** of a home in order to search a vehicle parked therein.”
- Sotomayor, writing for the Court, says NO!!

# Collins v. Virginia (cont.)

---

- An orange and black motorcycle committed traffic violations and eluded police officers on two different occasions. The officers figured out it was the same bike.
- Officers learned the bike was stolen and likely in the possession of Ryan Collins.
- From Collins' Facebook profile, the officers saw pictures of the motorcycle at the home of Collins' girlfriend.

## Collins v. Virginia (cont.)

---

Without a warrant, an officer went to the driveway of the home and saw the bike covered with tarp in the driveway. The officer walked up, pulled off the tarp, took a picture of the motorcycle, and returned to the police car.

The officer then saw Collins return home. The officer approached the house and spoke with Collins. Upon questioning, Collins admitted he bought the bike without title. He was indicted for receiving stolen property.



# Collins v. Virginia (cont.)

---

- Collins filed a motion to suppress, which the trial judge denied. Collins was convicted.
- On appeal, the Virginia Court of Appeals and the Virginia Supreme Court affirmed the conviction.

# Collins v. Virginia (cont.)

---

- Sotomayor and the Court reverses unanimously.
- The Fourth Amendment does not allow officers to enter the curtilage and access a vehicle without a warrant.
- “The reason is that the scope of the automobile exception extends no further than the automobile itself.”

# Collins v. Virginia (cont.)

---

- “Expanding the scope of the automobile exception in this way would both undervalue the core Fourth Amendment protection afforded to the home and its curtilage and untether the automobile exception from the justifications underlying it.”
- “Given the centrality of the Fourth Amendment interest in the home and its curtilage and the disconnect between that interest and the justifications behind the automobile exception, we decline Virginia's invitation to extend the automobile exception to permit a warrantless intrusion on a home or its curtilage.”



## Collins v. Virginia (cont.)

---

- “For the foregoing reasons, we conclude that the automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein. **We leave for resolution on remand** whether Officer Rhodes' warrantless intrusion on the curtilage of Collins' house may have been reasonable on a different basis, such as the exigent circumstances exception to the warrant requirement.”

# What happened on remand?

---

- On remand, the Commonwealth argues that two independent grounds support the trial court's decision to deny Collins's motion to suppress: the exigent circumstances exception to the warrant requirement and the good faith exception to the exclusionary rule.
- Virginia Supreme Court held that the officer acted in good faith and, thus, the exclusionary rule did not apply.

# City of Los Angeles v. Patel (2015)

---

- A Los Angeles city ordinance required hotels to provide guest information to officers upon demand.
- “[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.”
- A hotel operator's failure to make his or her guest records available for police inspection is a misdemeanor punishable by up to six months in jail and a \$1,000 fine.



## Patel (cont.)

---

- A group of hotel operators filed a facial Fourth Amendment challenge to the ordinance.
- A federal district court and a three-judge panel of the 9<sup>th</sup> Circuit upheld the ordinance, finding that the hotel owners lacked a reasonable expectation of privacy in the information.
- The 9<sup>th</sup> Circuit en banc reversed.
- The city appealed to the Supreme Court.

## Patel (cont.)

---

- The Court ruled 5-4 that the ordinance violated the Fourth Amendment. Justice Sotomayor wrote the Court's majority opinion.
- “We first clarify that facial challenges under the Fourth Amendment are not categorically barred or especially disfavored.”

## Patel (cont.)

---

- She cited four Supreme Court decisions that had invalidated other laws on Fourth Amendment grounds:
  - Chandler v. Miller (1997) – Ga. law requiring political candidates to submit to a drug test violated the Fourth Amendment;
  - Ferguson v. Charleston (2001) – invaliding a hospital policy of drug testing pregnant women
  - Payton v. New York (1979) – holding that a New York law authorizing warrantless searches of homes violates the Fourth Amendment;
  - Torres v. Puerto Rico (1979) –statute authorizing the police to search the luggage of any person coming from the U.S. violated the Fourth Amendment



## Patel (cont.)

---

- Turning to the merits of the particular claim before us, we hold that § 41.49(3)(a) is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review
- This type of administrative search requires “an opportunity for preclearance review.” Otherwise, the searches could exceed the law and “be used as a pretext to harass hotel operators and their guests.”

## Patel (cont.)

---

- She further rejected the argument that hotels are a “closely regulated” industry like liquor stores, firearms dealers, mining, or automobile junkyards.
- “To classify hotels as pervasively regulated would permit what has always been a narrow exception to swallow the rule.”

## Patel (cont.)

---

- 
- The ordinance also “fails sufficiently to constrain police officers' discretion as to which hotels to search and under what circumstances.”



# Missouri v. McNeely (2013)

---

- A police stopped Tyler McNeely's truck after observing it cross the center lane. McNeely performed poorly on field sobriety tests and declined to take a breath test.
- The officer then arrested McNeely but for some reason did not get a warrant for a blood draw. Instead, the officer ordered a lab tech to perform the blood test (to which McNeely did not consent). The BAC level was 0.154 percent.

# Missouri v. McNeely (cont.)

---

- Charged with DWI, McNeely filed a motion to suppress the results of the warrantless blood draw. Both a Missouri trial court and supreme court agreed with the defendant.
- Missouri appealed to the U.S. Supreme Court.

# Missouri v McNeely (cont.)

---

- Justice Sotomayor, writing for the Court, explained: “[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.”
- Reasonableness must be determined on case-by-case basis



# Missouri v. McNeely (cont.)

---

- “We hold that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.”

## *United States v. Jones* (2012)

---

- In this decision, the U.S. Supreme Court held that government officials violated the Fourth Amendment by attaching a global positioning system (GPS) device under Washington D.C. nightclub owner Antoine Jones' vehicle.

# United States v. Jones (cont.)

---

- In his majority opinion, Justice Antonin Scalia reasoned that the government physically trespassed on Jones' property by attaching the GPS device to the car.
- In her concurring opinion, Justice Sotomayor noted that “the Fourth Amendment is not concerned only with trespassory intrusions on property.”



## *United States v. Jones* (2012)

---

- Justice Sotomayor reasoned that Scalia's trespass theory of the Fourth Amendment was too limited in surveillance cases. She preferred the “reasonable expectation of privacy” test enunciated by Justice John Marshall Harlan II's concurring opinion in *Katz v. United States* (1967).

# United States v. Jones (cont.)

---

- She also questioned the viability of the third-party doctrine in Fourth Amendment law--the idea that persons have no reasonable expectation of privacy if they voluntarily provide the information to a third party. She wrote: “I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection.”

# United States v. Jones (cont.)

---

- Sotomayor also warned that the governmental surveillance employed in this type of case could harm associational freedoms, writing: “**Awareness that the government may be watching chills associational and expressive freedoms.**”



# Utah v. Strieff (2016)

---

- In this decision, the Supreme Court approved of a stop of an individual even though there was no reasonable suspicion for the stop. An anonymous call to police claimed that “narcotics activity” was occurring at a particular residence. A police officer then conducted intermittent surveillance of the residence and saw many visitors arrive at the residence and then depart after only a few minutes.
- One of these visitors was Edward Strieff.

## Utah v. Strieff (cont.)

---

- The officer observed Strieff leave the house and go to a convenience store. The officer then detained Strieff in the parking lot and had him produce identification. After relaying the information to a police dispatcher, the officer learned that Strieff had an outstanding warrant for a traffic violation. Consequently, the officer placed Strieff under arrest, searched him, and found illegal drugs.



## Utah v. Strieff (cont.)

---

- Justice Clarence Thomas, writing for the majority, reasoned that the valid arrest warrant broke the causal chain between the unlawful stop and the discovery of the illegal drugs. Thomas further reasoned that the arrest warrant was valid and was “entirely unconnected with the stop.” Thomas noted there was “no indication that this unlawful stop was part of any systemic or recurrent police misconduct.” He ruled that “the evidence discovered on Strieff’s person was admissible because the unlawful stop was **sufficiently attenuated** by the pre-existing arrest warrant.”



# Utah v. Strieff (cont.)

---

- Justice Sotomayor dissented.
- The Court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer's violation of your Fourth Amendment rights.”
- “This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants--even if you are doing nothing wrong.”

## Utah v. Strieff (cont.)

---

- Sotomayor added that “the officer's sole purpose was to fish for evidence.” She also emphasized that many people have outstanding warrants and that the majority’s decision gives license to law enforcement to treat “members of our communities as second-class citizens.”
- She also warned that “many innocent people are subjected to the humiliations of these unconstitutional searches,” adding that **“it is no secret that people of color are disproportionate victims of this type of scrutiny.”**

## *Heien v. North Carolina* (2014)

---

- This case involved a vehicle stop wherein the police officer made a mistake of law. The officer stopped a vehicle after noticing that it had only one operable brake light, despite a North Carolina law permitting the operation of vehicles with only one working brake light. The defendant, who had illegal drugs in the car, filed a motion to suppress and argued that the initial vehicle stop was unlawful.



## *Heien v. North Carolina* (cont.)

---

- The North Carolina law provided that a car must be
- “equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps

## *Heien v. North Carolina* (cont.)

---

- The Court majority, in an opinion by Chief Justice John G. Roberts Jr., determined that the officer acted reasonably even though he was mistaken about state law: “Because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.”
- Justice Sotomayor filed a lone dissent.

## *Heien v. North Carolina* (cont.)

---

- Sotomayor dissented, once again emphasizing that traffic stops can become frightening and humiliating. She wrote that “permitting mistakes of law to justify seizures has the perverse effect of preventing or delaying the clarification of the law.”
- She concluded that “an officer's mistake of law, no matter how reasonable, cannot support the individualized suspicion necessary to justify a seizure under the Fourth Amendment.”



# Kansas v. Glover (2020)

---

- A sheriff's deputy in Douglas County, Kansas, observed a 1995 pick-up truck while on routine patrol. He ran the license plate and learned the owner of the vehicle was Charles Glover Jr. who had a revoked driver's license. The deputy assumed that Glover was the driver of the vehicle and pulled the vehicle over. The driver was indeed Glover, and he was charged as a habitual violator.

# Kansas v. Glover (2020)

---

- In this decision, the Court ruled that a police officer did not violate the Fourth Amendment when he pulled over a vehicle assuming--but not knowing--that the driver of the vehicle was the owner of the automobile

# Kansas v. Glover (2020)

---

- Writing for the majority, Justice Thomas reasoned that the deputy made a “commonsense inference” that Glover likely was the operator of the vehicle. He also noted that “empirical studies” show that many persons with revoked driver licenses “frequently continue to drive.”
- Justice Thomas explained: “The inference that the driver of a car is its registered owner does not require any specialized training; rather, it is a reasonable inference made by ordinary people on a daily basis.” These commonsense judgments, according to Thomas, made the stop reasonable.



# Kansas v. Glover (cont.)

---

- Justice Sotomayor files another solitary dissent.
- **“Before subjecting motorists to this type of investigation, the State must possess articulable facts and officer inferences to form suspicion.”**
- She concluded that the Court “destroys Fourth Amendment jurisprudence that requires individualized suspicion.”

# Messerschmidt v Millender (2012)

---

- Los Angeles County officers searched the home of Jerry Ray Bowen's foster mother. The lead officer drew up a warrant for all firearms or gang-related material that might be at the residence.
- The foster mother sued.
- The officers pled qualified immunity.

## Messerschmidt (cont.)

---

- Justice Sotomayor dissented – she called the warrant a “general warrant.”
- She reasoned that “this kind of general warrant is antithetical to the Fourth Amendment.”
- “the Fourth Amendment does not permit the police to search for evidence solely because it could be admissible for impeachment or rebuttal purposes.”